

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Kuljinder Singh

DEFENDANTS

Michael Chertoff; Emilio T. Gonzalez; Michael B. Mukasey

(b) County of Residence of First Listed Plaintiff Northumberland (PA)
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert B. Jobe, Law Office of Robert B. Jobe
550 Kearny Street, Suite 200
San Francisco, CA 94108
(415) 956-5513

Attorneys (If Known)

United States Attorney's Office
450 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input checked="" type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 USC 701 et al.

Brief description of cause:

Administrative Procedure Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

DATE 2/8/08 ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

SIGNATURE OF ATTORNEY OF RECORD

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Attorney for Plaintiff.

UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA

KULJINDER SINGH,

Plaintiff,

v.

MICHAEL CHERTOFF, SECRETARY,
 DEPARTMENT OF HOMELAND SECURITY;
 EMILIO T. GONZALEZ, DIRECTOR; U.S.
 CITIZENSHIP AND IMMIGRATION SERVICES;
 MICHAEL MUKASEY, U.S. ATTORNEY
 GENERAL,

Defendants.

E-filing

ORIGINAL
 FILED

FEB - 8 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CRB

No.

CV 08

0880

COMPLAINT FOR RELIEF
 UNDER THE ADMINISTRATIVE
 PROCEDURE ACT

DHS Alien Number: 95-605-299

COMPLAINT FOR RELIEF UNDER THE ADMINISTRATIVE PROCEDURE ACT

By and through his undersigned attorney, Plaintiff KULJINDER SINGH ("Mr. Singh"), as for his complaint, alleges as follows:

PROCEDURAL HISTORY

1. Mr. Singh is a native and citizen of India who entered the U.S. near Phoenix, Arizona without inspection on or about June 4, 2002. On September 12, 2002, Mr. Singh filed an Application for Asylum (Form I-589) with U.S. Immigration and Naturalization Service.¹ He

¹Pursuant to the *Department of Homeland Security Reorganization Plan, Homeland Security Act of 2002*, Pub. L. No. 107-296, 116 Stat. 2135 (2002), 6 U.S.C. §§ 101-557, as of March 1, 2003, the INS was abolished and its functions were transferred to the Department of

1 attended an asylum interview in San Francisco, California on November 6, 2002.

2 2. On an unknown date, the San Francisco Asylum Office issued Mr. Singh a letter,
3 indicating that he was "previously informed that [his] Request for Asylum was **recommended for**
4 **approval** pending receipt by the [government] of the results of a mandatory, confidential
5 investigation of [his] identity and background." (Emphasis added). The letter further indicated
6 that while running the background checks, the asylum office learned that Mr. Singh was arrested
7 on July 5, 2002 in Salt Point, New York, for unlawfully dealing with a child and sale of alcohol to
8 a minor, and therefore requested the final court disposition in that case to be submitted within 60
9 days.

10 3. On December 13, 2002, Mr. Singh's prior attorney, Mohinder Singh, sent a letter
11 to the asylum office attaching a letter from Mr. Singh's criminal defense attorney, which indicated
12 that the charges stemming from the July 2002 arrest of "Surrinder Singh" were Adjourned in
13 Contemplation of Dismissal, such that at the end of a six-month period, the charges would be
14 dismissed provided there was no further trouble with the law. Mohinder Singh indicated in his
15 cover letter that Mr. Singh was "also known as Surrinder Singh." On January 3, 2003, Mr. Singh
16 mailed the asylum office a copy of the "Certificate of Disposition," which indicated that "Surinder
17 Singh" was granted an Adjournment in Contemplation of Dismissal on November 25, 2002 in the
18 Town of Dover Court, in Dover Plains, New York, related to the July 2002 arrest.

19 4. Over four years later, on May 30, 2007, the United States Citizenship and
20 Immigration Services ("USCIS") mailed a letter to Mr. Singh at "188-15 Cavendish Dr., Castro
21 Valley, CA 94552," stating:

22 Immigration records indicate that you were previously placed in deportation, exclusion, or
23 removal proceedings. Asylum regulations provide that only an immigration judge may
24 adjudicate the asylum application of an individual in proceedings before an immigration
25 court. See 8 CFR 208.2(b). Therefore, the asylum office does not have jurisdiction to
26 consider your asylum application. Your asylum application cannot be processed by the
27 asylum office at this time.

28 Homeland Security ("DHS").

1 The letter then provided the address of the San Francisco Immigration Court for “further
 2 information.” Mr. Singh was not given any opportunity to challenge the asylum office’s finding
 3 that he had previously been placed in removal proceedings, a fact that he firmly denies.

4 5. USCIS sent Mr. Singh another letter on October 2, 2007, to “209 Main Street,
 5 Blossburg, PA 16912,” denying his Application for Employment Authorization (Form I-765), and
 6 stating that:

7 USCIS records show that you filed a Form I-589 on September 12, 2002. A review of the
 8 records indicates that your asylum application was administratively closed on May 23,
 9 2007 by the San Francisco Asylum Office. The Asylum Office did not have jurisdiction
 over your asylum application because you were in proceedings before the Immigration
 Judge.

10 The results of your proceedings show that you were ordered removed from the United
 11 States by order of the Immigration Judge on March 22, 1999.

12 The USCIS has no record that you have a pending asylum application. For that reason,
 your Application for Employment Authorization (Form I-765) is denied.

13 There are no provisions in USCIS regulations that allow for an appeal from this decision.

14 6. Upon learning that his asylum application was terminated, a confused Mr. Singh
 15 retained undersigned, who promptly filed a Freedom of Information Request (“FOIA”).
 16 Undersigned received the FOIA request on January 7, 2008, which revealed numerous documents
 17 related to other individuals, including a March 22, 1999 Board of Immigration Appeals’ (“BIA”
 18 or “Board”) decision, affirming the denial of an asylum claim in the case of “Surrender Singh” (A
 19 72-764-131) and a March 8, 2000 *in absentia* removal order related to a “Surinder Singh Wahla”
 20 (A 73-427-486). Mr. Singh maintains that he is not the same individual whose case was dismissed
 21 by the BIA in 1999 or the individual who was ordered removed by a San Francisco Immigration
 22 Judge in 2000. At the time these decisions were being rendered, in 1999 and 2000, Mr. Singh
 23 was not even in the United States.

24 JURISDICTION

25 7. Jurisdiction over the subject matter of this civil action is conferred on this Court by
 26 28 U.S.C. § 1331, as a civil action arising under the Constitution, laws, or treaties of the United
 27

1 States; 28 U.S.C. § 1361, as a civil action in the nature of mandamus to compel an officer or
2 employee of the United States to perform a duty owed to Plaintiff; 5 U.S.C. § 702, as a challenge
3 to agency action under the Administrative Procedure Act (“APA”); and 28 U.S.C. §§ 2201 and
4 2202, as a civil action seeking, in addition to other remedies, a declaratory judgment.

5 VENUE

6 8. Venue is properly in this district pursuant to 28 U.S.C. §§ 1391(e)(2) and (e)(3),
7 because a substantial part of the events giving rise to this claim occurred in this district and no real
8 property is involved in this action.

9 INTRA-DISTRICT ASSIGNMENT

10 9. Because a substantial portion of the events that gave rise to this lawsuit occurred
11 in the County of San Francisco, this case should be assigned to the Court’s San Francisco
12 division.

13 STANDING

14 10. The APA affords a right of review to a person who is “adversely affected or
15 aggrieved by agency action.” 5 U.S.C. § 702. Defendants’ illegal action has immeasurably
16 prolonged Mr. Singh’s ability to legalize his status in the United States.

17 PLAINTIFF

18 11. Mr. Singh is a native and citizen of India who resides at “143 Main Street, Apt. #2
19 Watontown, PA 17777.” Although Mr. Singh filed an asylum application on September 12,
20 2002, USCIS refused to adjudicate it based on its belief that Mr. Singh had been ordered removed
21 in 1999 by the San Francisco Immigration Court - something that Mr. Singh vehemently denies.
22 Accordingly, Mr. Singh continues to remain in legal limbo.

23 DEFENDANTS

24 12. Respondent, Michael Chertoff, is sued in his official capacity as the Secretary of
25 the United States Department of Homeland Security (“DHS”). In that capacity, he has
26 responsibility for the administration and enforcement of the immigration laws pursuant to 8
27

1 U.S.C. § 1103, as amended.

2 13. DHS, encompassing USCIS, is the executive department “responsible for
3 providing immigration-related services and benefits such as naturalization and work authorization
4 as well as investigative and enforcement responsibilities for enforcement of federal immigration
5 laws, customs laws, and air security laws.” See <http://www.dhs.gov/ximgtn/>.

6 14. Emilio T. Gonzalez is the Director of USCIS and, as such, has been delegated
7 the authority to direct the administration of USCIS, and to enforce the Immigration and
8 Nationality Act (“INA”) and all other laws relating to the immigration and naturalization of non-
9 citizens. Defendant Gonzalez is sued herein in his official capacity.

10 15. USCIS is the federal agency within DHS that is responsible for the administration
11 and enforcement of the INA and all other laws relating to the immigration and naturalization of
12 non-citizens.

13 16. Respondent, Michael Mukasey, is sued in his official capacity as the Attorney
14 General of the United States. He retains certain responsibilities for administration and
15 enforcement of the immigration laws pursuant to 8 U.S.C. § 1103.

16 **FIRST CAUSE OF ACTION**

17 **(Violation of the Administrative Procedure Act)**

18 17. Plaintiff repeats, allege, and incorporate paragraphs 1 through 16 above as though
19 fully set forth herein.

20 18. Plaintiff is a person aggrieved by agency action under the Administrative
21 Procedure Act, 5 U.S.C. §§ 701 *et seq.* By failing to adjudicate the application for asylum filed
22 by Mr. Singh or even give Mr. Singh an opportunity to contest their belief that he had been
23 ordered removed from the United States under another name, Defendants have acted arbitrarily
24 and capriciously and have “unlawfully withheld or unreasonably delayed” agency action in
25 violation of 5 U.S.C. § 706.

26 //

27 //

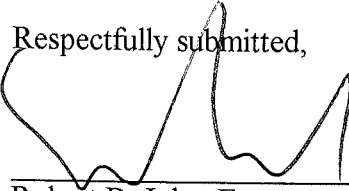
RELIEF REQUESTED

WHEREFORE, Plaintiff pray that this Court:

- (1) Accept jurisdiction over this action;
- (2) Declare Defendants' failure to adjudicate the application for asylum filed by Mr. Singh to be a violation of the Administrative Procedure Act and 28 U.S.C. § 1361;
- (3) Grant attorney's fees and costs of court under 28 U.S.C. § 2412, 28 U.S.C. § 1920, Fed. R. Civ. P. 54(d), and other authority; and
- (4) Grant such other and further relief as this Court deems just and proper under the circumstances.

DATED: February 8, 2008

Respectfully submitted,



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